Supreme Court, U.S.
FILED
APR 13 1989
JOSEPH F. SPANIOL, JR.
CLERK

88-1768

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

ARTHUR HEIM,

Petitioner,

vs.

High Plains Agricultural Credit Corp., et al.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Mr. Arthur Heim

Mr. Arthur Heim, Pro se
HC 63 Box 57
Bushnell, Nebraska 69128

Phone No. NONE

QUESTIONS PRESENTED FOR REVIEW

1. Is it right, just and lawful that this Petitioner was denied an equal ruling rendered by an Appeals Court of another Circuit, and was there a conflict of the Eighth Circuit Court's ruling of dismissal of allegations stated under 42 U.S.C. §1983?

2. Was there a conflict of rulings by federal Courts of the Eighth Circuit when the 6th Circuit ruled that dismissal without a hearing was judicial error?

3. Was there a conflict of rulings by federal courts of the Eighth Circuit when the 10th Circuit ruled that denial of rights were to be decided by a jury?

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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988

ARHTUR HEIM

Petitioner,

v.

High Plains Agricultural Credit Corp., et. al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE EIGHTH CIRCUIT COURT OF APPEALS

The Petitioner, Arthur Heim, respectfully prays that a writ of certiorari issue to review the judgment of dismissal of the U.S. District Court at Lincoln, Nebraska, and the denial of the Petition for rehearing of the United States Court of Appeals for the Eighth Circuit. The dates of the dismissal at Lincoln, Nebraska was June 27, 1988, and the order of the Eighth Circuit Appeals Court was January 19, 1989.

OPINION BELOW

The U.S. District Court at Lincoln, Nebraska entered its decision dismissing the amended complaint on June 28, 1988, (signed by the Judge on June 27, 1988). A Memorandum was rendered also. The order is attached as Appendix A and the Memorandum attached as Appendix B.

The Eighth Circuit Court of Appeals denied a Petition for rehearing by the panel on January 19, 1989. The copy of the denial by the Appeals Court is attached as Appendix C.

The U.S. District Court at Lincoln, Nebraska denied the Petitioner his demand for a jury Trial as de demanded under a 9th Amendment right of the United States Constitution.

JURISDICTION

Jurisdiction of this Court is invoked under Article III, Section 2 of the United States Constitution:

The Judicial Power shall extend to all Cases, in law and in Equity, arising under this Consitution. Jurisdiction is invoked pursuant to 28 U.S.C. §2101(C).

CONSTITUTIONAL PROVISION INVOLVED

The Constitution of the United States, Amendments I, IV, V, IX, X, and XIV are each and severally involved.

STATEMENT OF THE CASE

The Petitioner filed a complaint alleging violations of his civil rights. The complaint was filed on Jan. 6, 1988 Case no. cv88-0-06 at Omaha, Nebraska Petitioner amended the complaint on June 17, 1988. Judge Warren K. Urbom dismissed

the complaint by ruling that the Federal Court lacked Jurisdiction under the United States Consitution, Amendments Five, Thirteen, and Fourteen. The Petitioner States and alleged violations of due process (accomplished when property was taken without a judgment), accomplished only under color of LAW. There was no state law which permitted the taking of the property, and the taking was unconstitutional. The taking of the property resulted in a complete loss of means of livlihood, without a fair opportunity to be heard and without having to prove any claim for taking or giving any accounting to a court. The Judge of the Lincoln, Nebraska Federal Court Stated that he was not saying the defendants had done no wrong.

Activities of the defendants as stated in the complaint include professional negligence, breach of professional duties, violations of banking regulations, and the denial of a complete audit of bank records. The defendant Bank took property of this petitioner before any judgement was rendered, would not provide an explanation for the taking, and did not follow state law when they took property. The taking of the property was a direct violation of Amendments IV and V of the United States Constitution.

The Constitutional violations were sufficient to satisfy a Bivens Claim.

The Eighth Circuit Court of Appeals agreed that dismissal was proper by the United States District Court at Lincoln, Nebraska, and thereby agreed that the Court had lacked subject matter jurisdiction.

The U.S. District Court and the Appeals Court had completely ignored the request of this petitioner for a jury trial, (as a right under amendment IX of the U.S. Constitution). Dismissal had been granted without a fair hearing on the merits.

The decision of the Eighth Circuit Court of Appeals is in conflict with decisions rendered by other Federal Courts of appeals on the same matter of allegations of civil rights violations, giving cause for granting a writ of Certiorari.

REASONS FOR GRANTING THE WRIT

IS NOT THE UNITED STATES CONSTITUTION STILL THE "SUPREME COURT OF THE LAND"? AND, IF IT IS, WHY DOES NOT THE CONSTITUTIONAL REQUIREMENT OF SEIZURE OF PROPERTY REQUIRE TO JUDICIAL PROCESS UNDER AGNELLO V. UNITED STATES, 269 U.S. 20, (1925) AND, IF SO, WHEN A SEIZURE DID OCCUR WITHOUT ADHERENCE TO THAT PROCESS, DID NOT THIS PETITIONER STATE A VALID CLAIM OF CIVIL RIGHTS VIOLATIONS IN THE FEDERAL COURT UNDER MONROE V. PAPE, 81 S. Ct., 433, (1961)?

When the Petitioner was seized of his property without a judgment or Court Order and without being able to obtain a fair hearing, due process now requires that relief be afforded in This High Court.

The Petitioner submits that his civil rights were violated when property was seized in violation of State Law, and the fact that no state Law was used to accomplish the deprivation of the property. The violations of guaranted protections of Amendments to the United States Constitution give rise to a Bivens claim, Bivens V. Six unknown Agents, 403 U.S. 388. This Court has previously ruled that when any person takes or (causes deprivation of property without a Court order or) the right of a hearing, such acts have violated Civil rights of search and seizure of the 4th Amendment of the U.S. Constitution and will be a valid claim in a federal Court, Monroe v. Pape, 81 S. Ct. 433, (1961). The 4th Amendment prohibits unreasonable seizure and that protection extends to "house" and "effects". The High Court has emphasized over and over again that the mandate of the Constitutional Amendments require adherence to judicial process, Agnello V. United States, 269 U.S. 20, (1925).

Petitioner also submits that the Eighth Circuit Court of Appeals has denied him equal rulings rendered by other Circuit Appeals Courts relating to Civil Rights Complaints.

The Eleventh Circuit Court in Motes v. Myers, 810 F. 2d 1055, (1987), ruled that deprivation of rights secured by the U.S. Constitution accomplished under color of state Law satisfy a civil rights violation, 42 U.S.C. § 1983.

Petitioner submits that the Eighth Circuit Court of Appeals denied him an equal ruling rendered by the 6th Circuit Appeals Court in Lucarell v. McNair, 458 F. 2d 836, (1972). In this case the Appeals Court ruled that on appeal of a Civil rights action, it was the duty of the Appeals Court to view the allegations of the complaint in light most favorable to the complaint, assuming truth of factual allegations contained therein, and also that dismission without a hearing by the Court is judicial error.

Petitioner submits that the Eighth Circuit Appeals Court failed to acknowledge that dismissal had occurred without a jury trial, (which had been requested). The 10th Circuit Court of Appeals ruled that in a Civil Rights Complaint, due process afforded a right to trial when allegations had been stated of unlawful seizure, Stringer v. Dilger, 313 F. 2d 563, (1963).

Petitioner submits that denials of ruling rendered by other Appeal Courts presents a federal question. He also submits that violations of Constitutional protections present a Bivens Claim.

CONCLUSION

Considering the foregoing reasons and authorities, this petitioner respectfully requests that a writ of Certiorari be issued to review the dismissals by the federal court and the Appeals Court.

Petitioner requests that the dismissals be reversed and that he be allowed due Process which includes a jury trial and the right to have all the issues and evidence entered into the Court record, and that a trial at Law be granted to him.

Dated on this 12th day of April, 1989.

Mr. Arthur Heim

Mr. Arthur Heim
HC 63 Box 57
Bushnell, Nebraska 69128

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ARTHUR HEIM,	)	CV88-0-06
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
JUDGE JOHN D. KNAPP, et. al.,	)	
	)	
Defendants.	)	

Based on the reasons provided in the accompanying memorandum,

IT IS ORDERED that (1) the motion for recusal is denied, (2) the plaintiff's motion for a preliminary injunction, filing 38, is denied and, (3) the plaintiff's amended complaint, filing 36, is dismissed for lack of the court's lack of subject matter jurisdiction.

Dated June 27, 1988.

BY THE COURT

United States District Judge

ENTERED
ON THE DOCKET
JUN 28 1988
WILLIAM L. OLSON, Clerk
BY Janet Miller
Dep. Clerk

FILED
DISTRICT OF NEBRASKA
AT _____ M
JUN 27 1988
William L. Olson, Clerk
By _____ Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

ARTHUR HEIM,	)	CV88-0-06
	)	
Plaintiff,	)	MEMORANDUM
	)	ON PLAINTIFF'S
vs.	)	MOTION FOR
	)	PRELIMINARY
JUDGE JOHN D. KNAPP, et. al.,	)	INJUNCTION
	)	
Defendants.	)	

The plaintiff, Arthur Heim, has filed an amended complaint and a motion for a preliminary injunction in response to my order of June 6, 1988, filing 35. Because I find that this court does not have jurisdiction over the subject matter of the amended complaint, I will deny the plaintiff's motion and dismiss his complaint.

The plaintiff seeks relief under 42 U.S.C. §§1983, 1985, and 1988, specificially claiming that the defendants defrauded him and intentionally inflicted emotional distress upon him in violation of the fourth, fifth, thirteenth and fourteenth amendments. See Amended Complaint, filing 36, at ¶¶ 1A., 10, 15, and 20. He claims that jurisdiction is based upon the existence of a federal question, 28 U.S.C. §1331, and upon the diverse citizenship of the parties, 28 U.S.C. §1332. The amended complaint reveals no facts upon which jurisdiction under either statute can be based.

Heim set forth the mailing addresses of the several defendants in the complaint, some of which indicate that the defendant may be either domiciled or have its principal place of business in Nebraska. Id. at ¶¶ 11, 13-16, and 18. Because the plaintiff also is domiciled in Nebraska, complete diversity between the plaintiff and all of the defendants does not exist. In explaining 28 U.S.C. § 1332, the United States Supreme Court stated:

> This statute and its predecessors have consistently been held to require complete diversity of citizenship. That is, diversity jurisdiction does not exist unles each defendent is a citizen of a different State from each plaintiff.

Owen Equipment & Erection Co., v. Kroger, 437 U.S. 365, 373 (1978) (emphasis original). Because Heim has not alleged facts to demonstrate that his citizenship is different from the citizenship of all the defendants, I conclude that this court lacks jurisdiction founded upon section 1332.

The plaintiff also contends that the court has federal question jurisdiction because his claims arise under 42 U.S.C. §§1983, 1985 and 1988. At the outset, I note that Heim cannot allege a claim for relief under section 1988 since that section primarily provides for an award of a reasonable attorney fee and costs to parties who prevail in section 1983 or 1985 actions. See 28 U.S.C. §1988. Moreover, section 1985 requires the plaintiff to allege that there was a conspiracy and that it was motivated by racial or by an otherwise class-based indiviously discriminatory animus. Because Heim has failed to allege the motivation necessary to support a claim under section 1985, I must conclude that he has failed to state a claim for relief under section 1985.

In order to state a claim for relief under section 1983, plaintiffs must "show that they have been deprived of a federally protected right, privilege or immunity as a result of action taken by persons acting under color of state law." Littlefield v. City of Afton, 785 F. 2d 596, 600 (8th Cir. 1986). Although the amended complaint states that several of the actions about which Heim complains were taken under "color of law," I find that Heim has not alleged facts to support the "under color of state law" requirement of section 1983, and therefore, that this court lacks jurisdiction to consider the complaint or the motion for a preliminary injunction.

All of the defendants named in this lawsuit are private persons or entities. The defendents include Robert Simmons,

an attorney who represented Heim in a previous action, High Plains Agricultural Credit Corporation, the First Wyoming Bank, Travelers Indemnity Company, Key Bank, Deuel County State Bank, and several individuals who are presumably in some way associated with these instutions. Basically, Heim's complaint alleges that the defendants have used the courts and the judicial process to take his property fraudulently pursuant to a conspiracy, and to inflict upon him emotional distress intentionally.

Some courts have found that the effect of the "color of state law" requirement of section 1983 and the state action requirement for stating a claim for relief under certain constitutional amendments are equivalent, although not identical. See Harley v. Oliver, 539 F. 2d 1143 (8th Cir. 1976); Cobb v. Georgia Power Co., 757 F. 2d 1248 (11th Cir. 1985). The remedy provided in section 1983 does not extend to actions of a purely private nature, but I find no mention in Heim's complaint of a governmental actor.

Heim indicates that he believes that the defendants have misused the judicial system to obtain a result that is unfavorable to him. This belief and the allegations that he uses to describe the belief do not satisfy the state action requirement. The Teneth Circuit, in Torres v. First State Bank of Sierra County, 588 F. 2d 1322 (10th Cir. 1978), decided a case in which a plaintiff sued several parties, including a bank and some of its officials, under section 1983. The court explained that "(t)his is a case where private parties only were involved in state court litigation and it is alleged that the order granted by the court is erroneous and infringes on one party's rights to procedural due process." Id. at 1327. See also Kotmair v. Gray, 505 F. 2d 744, 745 (4th Cir. 1974). Though Heim did not specifically allege that the banks' actions constituted state action for purposes of section 1983, I note that the fact that banks are chartered by some local or federal government does not transform private actions taken by them or their employees into state action.

Further, the state action requirement cannot be satisfied on the basis that a lawyer is a named defendant or on the basis that the lawyer's actions took place in state court. The Eighth Circuit has held that the actions of a private attorney, even one who is appointed and paid by the state, do not constitute actions taken under color of state law for purposes of section 1983 actions. Chambers v. Kaplan, 648 F. 2d 1193, 1194 (8th Cir. 1981).

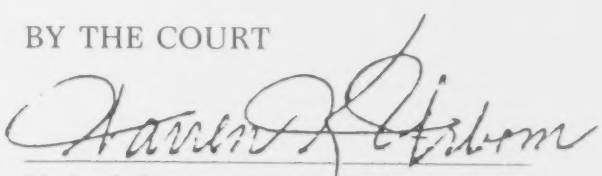
For these reasons, I conclude that Heim has not stated facts sufficient to present a federal question to this court. Since this court lacks jurisdiction over the subject matter of the action, I must dismiss this case based on the court's motion.

This does not mean that the defendants have done no wrong nor that the plaintiff has no recourse. I know nothing of what the defendants have done, but even if they have done exactly what the plaintiff says they have and if the plaintiff is able to prove it, this court has not jurisdiction. Some other court may have; this one does not. If I were to hear the case and order all the relief the plaintiff requests, the order would be overturned on appeal. That would waste everybody's time.

A motion for recusal was filed on June 23, supported by the affidavit of Arthur Heim. The affidavit contains no statement of facts that, assuming them to be true, would justify my recusal. Title 28, U.S.C. § 144 and 455 set out the requirements for recusal. In the absence of facts meeting those requirements I should not recuse myself.

Dated June 27, 1988.

BY THE COURT



United States District Judge

FILED
DISTRICT OF NEBRASKA
AT _____ M
JUN 27 1988
William L. Olson, Clerk
By _____ Deputy

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 88-2073

Arthur Heim,	*	
	*	
Appellant,	*	
	*	
v.	*	
	*	
High Plains Agricultural Credit Corporation; Jack Crews,k as loan officer, Eldon Stellpflug, as President; Jack Peters, as V.P., Merlin Olsen, as V.P.; First Wyoming Bank, a/k/a Cheyenne Nat'l Bk.; William Allen, as Pres. Travelers Indemnity Co.; Kent Goodman, agent, Deuel Co. St. Bk.; J. W. Bill Epson, Pres.; June E. Lamureux, officer Key Bank, a/k/a Commercial Security Bank; Patty Banks, as officer; Robert G. Simmons, other unnamed John Does and Mary Janes,	*	Appeal from the United States District Court for the District of Nebraska.
	*	
Appellees.	*	

Submitted: November 30, 1988

Filed: December 12, 1988

Before HEANEY, BOWMAN, and BEAM, Circuit Judges.

PER CURIAM:

Arthur Heim appeals the district court's[1] order dismissing his civil rights suit for lack of subject matter jurisdiction. We affirm.

A review of the complaint indicates that complete diversity between the parties does not exist. Title 42 U.S.C. §1988 cannot establish a basis for jurisdiction. Heim has failed to allege the discriminatory motivation necessary to support a claim for relief under 42 U.S.C. § 1985, and has failed to allege the state action necessary to support a claim for relief under 42 U.S.C. § 1983.

Accordingly, we affirm on the basis of the district court's well-reasoned opinion.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

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[1]The Honorable Warren K. Urbom, United States District Judge for the District of Nebraska.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 88-2073NE

Arthur Heim,	*	
	*	
Appellant,	*	
	*	Appeal from the United
vs.	*	States District Court for the
	*	District of Minnesota.
High Plains Agricultural	*	
Credit Corporation, etc., et al,	*	
	*	
Appellees.	*	

Appellant's pro se petition for rehearing en banc has been considered by the Court and is denied.

Petition for rehearing by the panel is also denied.

January 19, 1989

Order entered at the Direction of the Court:

Robert D. St. Vrain

Clerk, U. S. Court of Appeals, Eighth Circuit.